

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

60184

FILE: B-184863

DATE: November 18, 1975

MATTER OF: Marin Aviation, Inc.

97714

DIGEST:

1. In response to IFB provision requiring furnishing of aircraft "current weight and balance" information, protester submitted aircraft owners' manuals with "current weight" of aircraft handwritten on cover. Though protester alleges information supplied was adequate, failure of protester to provide "current balance" information in any form in his response to solicitation as required by solicitation makes bid non-responsive. Protester's additional contention that furnishing of "current weight and balance" information was not necessary to Government's needs is untimely pursuant to Bid Protest Procedures when filed after opening of bids.
2. CAO recommends to Secretary of Agriculture that he review term "current weight and balance" to establish that it meets standards for clarity in descriptive literature clauses pursuant to FPR § 1-2.202-5(c) (1964 ed.) and that if necessary, corrective action be taken in future procurements of this type.

Invitation for bids (IFB) No. R5-75-183 was issued by the United States Forest Service on June 27, 1975, for light airplane services. Bids were opened on July 17, 1975. Among the conditions of the IFB was the following "REQUIREMENT FOR DESCRIPTIVE LITERATURE:

"2. Current weight and balance.

"Descriptive literature as specified above must be furnished separately for each item offered as a part of the bid and must be received before the time set for opening bids. The literature furnished must be identified to show the item in the bid to which it pertains. The descriptive literature is required to establish, for the purposes of bid evaluation and award the performance capabilities of the airplane to be used under the contract.

B-184863

"Failure of descriptive literature to show that the product offered conforms to the Specifications and other requirements of this Solicitation will require rejection of the bid."

Marin Aviation, Inc. (Marin), the protester, was one of eight bidders on a seven item solicitation. Award was made to the low bidder, Aero Trends, Inc., on items 1, 2, 4, and 7. Items 3, 5, and 6 of the solicitation were cancelled to be resolicited at a later date. Although Marin was not the low bidder on any of the items on which awards were made, the solicitation provided that "multiple awards to a maximum of three may be made under each item." Therefore, depending on the severity and length of the forest fire season, the possibility still exists of an award to Marin on any of the four items on which awards were made pursuant to the instant solicitation.

In response to the above quoted descriptive literature clause of the solicitation pertaining to "current weight and balance" for item 1, Marin submitted the aircraft owner's manual with the following words handwritten on the cover: "ACTUAL EMPTY WEIGHT: 1630 LBS." The Forest Service informs us that Marin's submittals with respect to weight and balance data required for the other items of the solicitation were made in a similar manner.

The Forest Service found Marin's bids to be nonresponsive because its submission of "current weight and balance" information was made in general terms and not in specific terms for the particular aircraft involved in each item bid upon. Although denying that the weight and balance information requested had to take any particular form, it is the Forest Service's position that "regardless of what form an offeror elects to use, * * * the information provided must be adequately clear and sufficiently detailed to indicate the current (and 'current' is emphasized) weight and balance of the aircraft offered."

Marin is protesting the Forest Service's determination of nonresponsiveness. It is Marin's position that the "current weight and balance" information it provided met the descriptive literature requirements of the solicitation.

As noted above, an examination of the aircraft owner's manual provided by Marin for item 1 indicates that the "actual weight" of the aircraft has been handwritten on the cover. However, nowhere in the manual were we able to find balance information, either general or specific in nature, pertaining to the aircraft involved. Moreover, as previously noted, the Forest Service has informed us that submissions by Marin for items 2, 4, and 7, were made in a manner similar to that noted above, i.e., "actual" aircraft weight information was handwritten on the cover of the aircraft owner's manual, but neither general nor specific aircraft balance information was provided therein.

It is therefore evident that Marin failed to provide current aircraft balance information as required by the solicitation. Assuming arguendo that Marin's contention is correct and that only general information was required, Marin has failed to satisfy even this minimum requirement. Whether this information had to be specific, as the Forest Service contends or general, as Marin contends is therefore immaterial to our decision. We agree that the Forest Service correctly found Marin's bids to be nonresponsive.

We wish to point out, however, that from the present record it is not clear whether the Forest Service has fully complied with provisions of the Federal Procurement Regulations (FPR) (1964 ed. amend. 10) pertaining to descriptive literature clauses. Section 1-2.202-5(d) thereof, provides inter alia that "when descriptive literature is required, the invitation for bids shall clearly state what descriptive literature is to be furnished * * * /emphasis supplied/." Moreover, FPR § 1-2.202-5(c) provides that "the reasons why acceptable products cannot be procured without the submission of descriptive literature shall be set forth and filed in the case file, except where such submission is required by the formal specifications (Federal, military, departmental, etc.) applicable to the procurement." We note that the record furnished our Office does not contain any justification for inclusion of the instant descriptive literature clause.

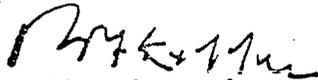
Although, as noted above, we did not find it necessary to decide the issue of the clarity of the term "current weight and balance" in the instant case, we are bringing this problem to the attention of the Secretary of Agriculture. By separate letter of today, we are recommending that he consider the possibility of clarifying the term "current weight and balance," if necessary, to insure that future Forest Service solicitations fully comply with the FPR § 1-2.202-5(d), supra.

B-184863

Additionally, Marin is protesting the form of the solicitation, alleging that "current weight and balance" information was unnecessary for the Government's stated purpose, i.e., determining the capability of aircraft to be used under the terms of the solicitation.

Our Bid Protest Procedures, 40 Fed. Reg. 17979 (1975), provide that "Protests based upon alleged improprieties in any type of solicitation which are apparent prior to bid opening * * * shall be filed prior to bid opening * * *." 40 Fed. Reg. 17979, supra, § 20.2(b)(1). Marin's protest was received by the Forest Service on July 31, 1975, 10 working days after the date set for bid opening. Since Marin did not file this aspect of its protest prior to bid opening as required by our Bid Protest Procedures, supra, this aspect of the protest must be considered untimely.

Accordingly, Marin's protest is denied.


Deputy Comptroller General
of the United States